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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: DISCLOSURE OF TAXPAYER RETURNS AND RETURN INFORMATION	CR 11 Misc. No. 90 501 MISC EX PARTE APPLICATION FOR DISCLOSURE OF TAX RETURN AND RETURN INFORMATION EDL

The United States of America, by and through its attorneys, MELINDA HAAG, United States Attorney for the Northern District of California, and HARTLEY M. K. WEST, Assistant United States Attorney, hereby moves the Court, pursuant to 26 U.S.C. § 6103(i)(1)(A)(iii), for an *ex parte* order authorizing the disclosure of the 2000 through 2003 returns, return information, and other information concerning:

RAFIC LABBOUN,

listed with the following addresses:

In support of this motion, the government states as follows:

A. STATUTORY AUTHORITY

1. Generally, income tax returns cannot be disclosed by the Internal Revenue Service. 26 U.S.C. § 6103(a). An exception to this general rule, however, is provided by 26 U.S.C. § 6103(i), which authorizes a court to order disclosure in connection with the administration of federal laws not relating to tax administration.

2. Section 6103(i)(1) provides:

> (1) Disclosure of returns and return information for use in criminal investigations. --
>
> (A) In general. -- Except as provided in paragraph (6), [Paragraph 6 provides an exception to disclosure if the Secretary of the Treasury determines "that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation."] any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in --
>
> (i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated criminal statute (not involving tax administration) to which the United States or such agency is or may be a party,
>
> (ii) any investigation which may result in such a proceeding, or
>
> (iii) any Federal grand jury proceeding pertaining to the enforcement of such a criminal statute to which the United States or such agency is or may be a party,
>
> solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.
>
> (B) Application for order. -- The Attorney General . . . [or] any United States Attorney . . . may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if he determines on the basis of facts submitted by the applicant that --
>
> (i) there is reasonable cause to believe, based upon such information believed to be reliable, that a specific criminal act has been committed,

> (ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and
>
> (iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

3. The statute defines returns and return information to include, among other things, any tax or information returns, including supporting schedules and attachments; a taxpayer's identity; the nature, source, or amount of the taxpayer's income, payments, and adjustments; whether the taxpayer's return was, is being, or will be examined or subject to other investigation; any other data in the possession of the Secretary of the Treasury relating to a return or to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, or interest; any part of any written determination or any background file document relating to such written determination that is not open to public inspection. *See* 26 U.S.C. § 6103(b).

B. BASIS FOR REQUEST

As demonstrated by the facts set forth more fully in the Declaration of Jeff H. Graham, which is attached to and is part of this application:

1. The United States Attorney's Office and the Federal Bureau of Investigation (FBI) are currently conducting an investigation that may result in a judicial or grand jury proceeding regarding Rafic LABBOUN.

2. Based upon information believed to be reliable, there is reasonable cause to believe that LABBOUN has committed criminal acts, specifically, mail fraud in violation of 18 U.S.C. § 1341; money laundering, in violation of 18 U.S.C. § 1957; and conspiracy, in violation of 18 U.S.C. § 371.

3. The returns, return information, and other information sought by this application are or may be relevant to the commission of these criminal acts, as further described in the attached Declaration of Jeff H. Graham. The government is aware that LABBOUN received a check as compensation for shares of Enron stock; this check was mailed to LABBOUN at the

address of his friend in Oregon; his friend in Oregon has pleaded guilty to engaging in a fraud scheme to obtain checks for stock settlements to which he was not entitled; and LABBOUN cashed the Enron check on January 5, 2009. Records in the government's possession indicate that LABBOUN never owned Enron stock, or at least not during the period giving rise to the settlement check. The requested returns, return information, and other information should reflect whether any Enron stock was purchased or sold during 2000 through 2003.

4. The government is seeking these returns, return information, and other information exclusively for use in this federal criminal investigation. These documents cannot reasonably be obtained, under the circumstances, from another source. Any disclosed returns, return information, and other information will be disclosed to the United States Attorney, Assistant United States Attorney Hartley M. K. West, and any other persons only in accordance with the provisions of 26 U.S.C. § 6103 and 26 C.F.R. § 301.6103(i)-1.

5. As required by statute, the United States Attorney has authorized this application.

THEREFORE, the government respectfully requests that this Court issue an order:

Authorizing the disclosure of the returns and return information as those terms are defined in 26 U.S.C. § 6103(b), and other information, to the United States Attorney, Assistant United States Attorney Hartley M. K. West, and any other persons only in accordance with the provisions of 26 U.S.C. § 6103 and 26 C.F.R. § 301.6103(i)-1, including but not limited to any tax or information returns, including any supporting schedules, attachments, or lists; any documents identifying the nature, source, or amount of the taxpayer's income, receipts, assets, and liabilities, including CMIRs and Forms 8300; documents related to any examination, investigation or processing of the taxpayer's return; any documents reflecting a determination of liability of any person or any background file documents relating to such written determination; any documents collected or voluntarily provided to the Internal Revenue Service (IRS) from sources other than the taxpayer; and certificates of non-filing if returns or return information have not been filed, for 2000 through 2003, concerning:

RAFIC LABBOUN,

listed with the following addresses:

Respectfully Submitted,

Date: 6/7/11

MELINDA HAAG
United States Attorney

DECLARATION

I, Jeff H. Graham, declare under penalty of perjury:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the San Francisco Division. I make this declaration to the best of my information, knowledge, and belief, which I have acquired as part of my official duties as a Special Agent of the FBI.

2. I am personally and directly engaged in a criminal investigation involving Rafic LABBOUN. During this investigation, the FBI has uncovered evidence tending to show that LABBOUN made false claims to fraudulently receive money from securities litigation settlements, totaling approximately $24,000.

A. Background

3. LABBOUN is a naturalized U.S. citizen. He was arrested on January 12, 2009, on bank fraud charges arising out of a credit card bust-out scheme. A jury convicted LABBOUN on April 1, 2010. On July 19, 2010, he was sentenced to 27 months' imprisonment. He remains in custody at the Federal Correctional Institute in Lompoc, California.

B. Factual Basis for Request

4. At the time of LABBOUN's arrest, FBI agents found on his person a letter regarding Enron Corporation Securities Litigation. The letter referenced a check payable to LABBOUN in the amount of $13,690.35, which appeared to have been previously attached, and was addressed to LABBOUN This address is the residence of LABBOUN's friend, Hussein Ali Mehdi. LABBOUN was living outside of the United States at the time. LABBOUN cashed the check on January 5, 2009.

5. On March 29, 2011, Mehdi pleaded guilty to three counts of mail fraud and one count of filing a false federal tax return arising out of a scheme to fraudulently obtain securities litigation settlement funds. This scheme was accomplished by submitting false claims, through the mail, to claims administrators for class action settlements associated with various securities litigation.

6. LABBOUN conspired with Mehdi to submit seven false claim forms to the claims administrators for six class action settlements. To support his false claims, LABBOUN provided

fraudulent brokerage account statements purportedly from TD Waterhouse, falsely representing that LABBOUN owned stock shares during the time period covered by the class action settlement. The brokerage statements falsely reflected trades between April 2000 and November 2002.

7. Based on these false claims, the claims administrators mailed LABBOUN checks totaling $24,117.39. Four of the checks were sent to Mehdi's address. The other three checks were sent to addresses in Mountain View and Sunnyvale, California.

C. Conclusion

8. Based on the above information, there is reasonable cause to believe that LABBOUN has committed mail fraud, money laundering, and conspiracy. There is further reasonable cause to believe that the returns, return information, and other information sought by this application are or may be relevant to these criminal acts, because they will establish that LABBOUN did not in fact purchase the stock as he alleged he did in his settlement claim forms. The records are sought for the years 2000 through 2003 because LABBOUN's settlement claim forms relate to purported stock purchases made between 2000 and 2002.

9. The information sought cannot reasonably be obtained, under the circumstances, from another source.

DATED: 05/25/2011

JEFF H. GRAHAM